

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3794

IN THE MATTER OF:

Served July 15, 1991

Application of MONICA MILLS, BRENDA)
WILLIAMS, and LARRY WILLIAMS, a)
Partnership Trading as MONCHEN'E,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-91-10

Application of MONICA MILLS, BRENDA)
WILLIAMS, and LARRY WILLIAMS, a)
Partnership Trading as MONCHEN'E,)
for Temporary Authority -- FHWA)

Case No. AP-91-11

By application filed February 14, 1991, Monica Mills, Brenda Williams, and Larry Williams, a Partnership trading as Monchen'e (Monchen'e or applicant), seeks a Certificate of Authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to vehicles seating 15 or fewer persons, including the driver.

By application filed February 20, 1991, Monchen'e also seeks temporary authority to transport passengers in irregular route operations between points in the Metropolitan District for the account of the Federal Highway Administration (FHWA) of the United States Department of Transportation (USDOT).

Pursuant to Order No. 3651, served March 27, 1991, a hearing on these matters was held on April 24, 1991. A protest to both applications had been filed, but the protestant failed to appear at the hearing. Both applicant and staff counsel filed opening briefs and reply briefs.

Applicant Monchen'e is a partnership comprised of Larry Williams, his wife, Brenda Williams, and their daughter, Monica Mills, and was formed on January 1, 1991. It has been awarded a small business set-aside contract by the FHWA in the amount of \$194,606 to provide transportation service over a period of four years and eight months. Service would be performed with a 15-passenger van operating on a fixed, round-trip schedule between Department of Transportation Headquarters (Nassif Building), Seventh and D Streets, S.W., Washington, DC, and the Turner-Fairbank Highway Research Center, McLean, VA. Eight daily round trips would be made. The FHWA commitment is only for the first eight months of service, with an option (in its sole discretion) to renew for each of four additional one-year periods. Specific compensation for each period, as hereinafter discussed, is provided. A certificate of support attesting to the need for the service is of record.

Applicant proposes to provide the described service with a 15-passenger van which it holds under lease from John A. Waller. Mr. Waller, in turn, controls this vehicle under a lease from the owner. 1/ An inspection certificate dated February 8, 1991, and an insurance certificate providing proper coverage, effective until January 29, 1992, are of record.

The application asserts that the leased van would be serviced according to the requirements of the lessor and minor and major repairs accomplished by a dealer. Interim maintenance would be performed every 3,000 miles. Mr. Williams would drive the van and is stated to have 12 years experience driving a 47-passenger bus and to have held a driver's license for 25 years. Requirements for drivers are: state licenses, health clearances, and successful completion of road testing. Incentives are intended for excellent driving.

Applicant has no USDOT safety rating. However, Mr. Williams certified in the application that Monchen'e has access to, is familiar with, and will comply with all USDOT regulations relating to the safe operation of commercial vehicles and the safe transportation of passengers for hire, and with the Compact and the Commission's rules and regulations.

Financial statements supporting the application contain some apparent errors, due to preparation by persons untrained in accounting. Thus, depreciation expense on a leased vehicle, and provision for income taxes on a projected loss, are not appropriate. The projected FICA and unemployment tax costs are clearly excessive, while, on the other hand, no provision has been made for the annual cost of lease payments, amounting to \$5,628. As corrected, we find that the applicant's financial projections indicate an average monthly cost of \$3,297.17 and average monthly income over the 4-2/3 years of \$3,475.16 before income taxes. Since the agreement with FHWA provides for a graduated increase in annual payments, the applicant would not experience a net profit in the first two years, but would do so during the last three years.

Case No. AP-91-10 is governed by the Compact, Title II, Article XI, Section 7 which requires (1) that an applicant be fit, willing, and able to perform properly the transportation for which authority is sought, to conform to the provisions of the Compact, and to conform to the Commission's rules, regulations, and requirements and (2) that the proposed transportation be consistent with the public interest. Case No. AP-91-11 is governed by the Compact, Title II, Article XI, Section 13 which requires that there be an immediate need for service that is not available. Fitness of the applicant is also an issue. See Application of Suburban Transit Company for Temporary Authority to Service the Capital Centre, Order No. 1643, served

1/ At the hearing, Mr. Waller stated that the lease was originally from Maryland Banklease, but that lessor had sold the lease to another company. Mr. Waller is solely liable on the lease. He also appeared at the hearing as counsel for the applicant.

January 24, 1977; and Application of American Coach Lines, Inc., for Declaratory Order and or, in the Alternative, Temporary Authority to Conduct Charter Operations Between Points in the Metropolitan District, Order No. 2738, served July 22, 1985. See also Order Nos. 2440, 2448, 2864, and 3221, served July 22, 1983; August 10, 1983; May 23, 1986; and August 23, 1988, respectively.

There remains for consideration whether the applicant is fit, willing, and able to perform properly the proposed transportation and to conform to the Compact and the Commission's rules, regulations, and requirements. Although the applicant is a partnership, we find on the record herein that Larry Williams will be, in fact, the controlling partner and sole employee. The significant issue, therefore, is whether the applicant, under Mr. Williams' direction, has shown that it is fit, willing, and able to satisfy the requirements of Section 7.

Prior to 1984, Larry Williams was a principal in a company named Tailgate Bus Service, Inc. The record warrants a finding that this company was not incorporated, and was, in fact, Mr. Williams d/b/a Tailgate Bus Service. As a result of a proceeding by this Commission before the United States District Court for the District of Columbia, an injunction was issued on March 4, 1984, enjoining Larry Williams, Stanley Williams, and Tailgate from engaging in the transportation of passengers for hire between any points in the Metropolitan District, unless, and until, appropriate authority therefor was issue by this Commission. 2/

At some time thereafter, Larry Williams changed the name of Tailgate to Action Bus Tours, Inc. The record warrants a finding that Action was not incorporated, but, like its predecessor, was Mr. Williams d/b/a Action Bus Tours. This operation continues to exist and is said to hold two buses under lease. There is no authority from this Commission for Action.

The application for a certificate was filed on February 14, 1991. With it is a letter from Mr. Williams to the Commission dated February 5, 1991, confessing error in the matters which led to the 1984 injunction, asserting that violations were due to ignorance of WMATC regulations, and asserting an ability to comply at this time. The record also reveals that as recently as October 13, 1990, Mr. Williams, acting as General Manager of Action, contracted to provide bus service to a group of 20 students to attend a school dance. There was a partial failure of performance, and in January 1991, the contracting parties obtained a judgment against Mr. Williams in an amount in excess of \$500. This judgment was not paid until April 1991, shortly before the hearing date in this case.

2/ It is contended that the unlawful activities which precipitated the injunction were actually conducted by Stanley Williams, a brother of Larry Williams. The latter, it is asserted, had no knowledge of the unauthorized transportation. Nonetheless, the injunction was issued against both individuals, and, at least from 1984, Larry Williams cannot claim ignorance of the WMATC and regulations respecting passenger transportation for hire within the Metropolitan District.

The service for which Mr. Williams chartered the bus was from Earlsgate Lane, Rockville, MD, to Walter Johnson High School. We take official notice that both points are within the Metropolitan District, and the transportation was not authorized by this Commission. At the hearing, Mr. Williams disclosed that he did not know the boundaries of the Metropolitan District. If this application is granted, Mr. Williams testified, he might combine Action with Monchen'e, but in any event, would still do tour and charter work. He expressed no intent to obtain appropriate authority for such service for Action.

The record is clear that, regardless of some testimony to the contrary, Larry Williams would manage Monchen'e. It is his address that constitutes Monchen'e's facilities; his phone numbers represent points of contact with applicant; he is required by the partnership agreement to sign documents; he has signed the vehicle lease for Monchen'e; he would drive Monchen'e's vehicle; he testified for the partnership; he appears to have completed most of the application, including the fitness certification. It is evident that, at least since 1984, Larry Williams knew that passenger transportation for hire operations within the Metropolitan District were forbidden without authority from this Commission. The intervening seven years provided ample opportunity to become aware of the regulations insofar as they affect his activities. Nonetheless, less than three months prior to filing the present applications, Mr. Williams performed transportation service which violated both the law and regulations of this Commission and the injunction of the United States District Court. If this action was the product of ignorance, it also demonstrates a lack of interest in learning and obeying the applicable laws and regulations. We cannot find that the applicant is fit, willing, and able to perform properly the transportation for which authority is sought, to conform to the provisions of the Compact, and to conform to the Commission's rules, regulations, and requirements.

In order to be ready, willing, and able to comply with relevant statutes and rules, regulations, and orders, one must, at a minimum, know what those are and be willing to act on that knowledge. Applicant has demonstrated neither condition. After thoroughly reviewing and considering the evidence in these cases, the Commission finds that applicant has failed to meet its burden of proof on the issue of fitness. Therefore, both applications will be denied.

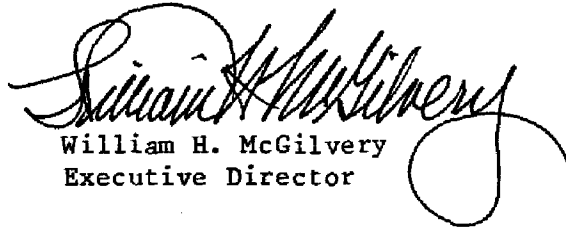
In light of the Commission's findings on the issue of fitness, it is unnecessary to address the matter of consistency with the public interest.

THEREFORE, IT IS ORDERED:

1. That the application of Monica Mills, Brenda Williams, and Larry Williams, a partnership trading as Monchen'e, for a Certificate of Authority, is hereby denied in its entirety.
2. That the application of Monica Mills, Brenda Williams, and Larry Williams, a partnership trading as Monchen'e, for temporary authority, is hereby denied in its entirety.

3. That Monical Mills, Brenda William, and Larry Williams, a partnership trading as Monchen'e, are hereby assessed an additional amount of \$56 pursuant to the Compact, Title II, Article XIV, Section 1, and are directed to deliver that amount to the office of the Commission, 1828 L Street, N.W., Suite 703, Washington, DC 20036-5104, no later than Wednesday, July 31, 1991.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS SCHIFTER AND SHANNON:



William H. McGilvery
Executive Director